IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20-04-2005

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K. KRISHNAN

Civil Misc., Appeal Nos. 532, 1675 to 1677 of 2003 and

C.R.P. 1031 of 2003

and C.M.P.Nos. 10793 to 10795/2003 and 16352/2004

C.M.A.No. 532/2003

1. Dr. P. Shanmugharaj,

2. Minor Srikanth Sibiraja,

3. Minor Lakshmi Deeparaja,

(Minors 2 and 3 are represented by their father and natural guardian Dr. P. Shanmugharaja)

..Appellants.

Vs.

1. Subramaniam,
2. Tamil Nadu State Transport Corporation Ltd.,, Periyakulam Branch, Dindigul rep. by its Managing Director.

3. K. Govindaraj,

4. United India Insurance Company Ltd., Erode,

5. P.N. Nallasivam,

6. P.P. Mohanasundaram.

.. Respondents.

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C.M.A.No. 1675/2003

Tamil Nadu State Transport
Corporation Ltd., Periyakulam Branch,
represented by its Managing Director.

.Appellant

Vs.

1. Dr. P. Shanmugaraj,
2. Minor Srikanth Sibi Raja,
3. Minor Lakshmi Deepa Raja
   (Minor respondents 2 and 3 are
    represented by their father and
    friend-1st respondent).

4. Subramaniam,
5. P.N. Nallasivam,
6. K. Govindaraj,
7. T.P. Mohana Sundaram,
8. United India Insurance Company Ltd.,
   Erode.

.. Respondents.

C.M.A.No. 1676/2003

Tamil Nadu State Transport
Corporation (Division-I) Limited,
Dindigul,
represented by its Managing Director
at Bye-Pass Road, Chetty Naickenpatti,
Dindigul.

.. Appellant.

Vs.

1. K. Govindaraj
2. P. Subramani

.. Respondents.

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C.M.A.No.1677/2003

Tamil Nadu State Transport
Corporation (Division-I) Limited,
Dindigul,
represented by its Managing Director
at Bye-Pass Road, Chetty Naickenpatti,
Dindigul.

.. Appellant.

Vs.

1. Nachimuthu,
2. Mrs. Pavazhoy Ammal,
3. Mrs. K.T. Manimala,
4. P. Subramani

.. Respondents.

C.R.P (NPD) No. 1031 of 2003

Managing Director,
Tamil Nadu State Transport
Corporation (Division-I) Limited,
Dindigul.

.. Petitioner

Vs.

1. K. Govindaraj,
2. T.P. Mohana Sundaram,
3. Branch Manager,
   United India Insurance Company
   Limited, Erode.

.. Respondents

Civil Misc., Appeals filed under Section 173 of the Motor Vehicles Act, 1988; and Civil Revision Petition filed under Article 227 of the Constitution of India, against judgement and decree dated 31-12-2002, made in M.C.O.P.Nos. 528/95; 528/95; 903/98; 1084/96; and 1083/96 respectively on the file of Principal Subordinate Judge (in-Charge)(Motor Accidents Claims Tribunal), Coimbatore.

Mr. R. Gandhi, Senior counsel for M/s R.G. Narendran:- Appellants in CMA 532/2003 and Respondents 1 to 3 in CMA.1675/2003.

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Mr. R. Thiagarajan, Senior counsel for Mr. L.G. Sahadevan:- Appellants in CMA Nos. 1675 to 1677/2003 and CRP No. 1031/2003 and for 2nd Respondent in CMA. 532/2003.

Mr. Saravanan for R1 to R3 in CMA 1677/2003.

No appearance for R4 to R8 in CMA.1675/2003.

No appearance for R1 and R2 in CMA.1676/2003; R4 in CMA.1677/2003; R1,R3 and R4 in CMA.532/2003

R5 & R6 given up in CMA No.532/03.

COMMON JUDGEMENT

(Judgement of the Court was delivered by *P. Sathasivam,J.,*)

Since the above appeals and Revision arise out of the very same accident that had taken place on 19-12-1994, they are being disposed of by the following common Judgement.

2. Claimants in M.C.O.P.No. 528/95 filed C.M.A.No. 532/2003, praying for the balance amount of Rs.2,27,18,040/- out of the restricted amount of Rs. 3 Crores. Questioning the finding regarding negligence and compensation of Rs.72,81,960/-, Tamil Nadu State Transport Corporation has filed C.M.A.No. 1675/2003. Aggrieved by the award of compensation of Rs.48,852/- granted in favour of K. Govindaraj, claimant in M.C.O.P.No. 903/98 towards damages caused to his car, the State Transport Corporation has filed C.M.A.No.1676/2003. In respect of compensation of Rs.2,61,200/- granted in favour of legal heirs of the car driver in M.C.O.P.No.1084/96, the State Transport Corporation has filed C.M.A.No. 1677/2003. The same Transport Corporation has filed C.R.P.No. 1031/2004 in respect of rejection of their claim for damages to their vehicle in M.C.O.P.No. 1083/96.

3. Thus, in the first C.M.A. (C.M.A.No. 532/2003) the claimants in M.C.O.P.No. 528/95 seek for higher compensation, while in the other C.M.As., and the C.R.P., the Transport Corporation question the compensation granted as well as rejection of their claim petition for damages caused to their bus to the extent of Rs.3,931/-.

4. Heard Mr. R. Gandhi, learned senior counsel for the claimants/appellants in C.M.A.No. 532/2003 and Mr. R. Thiagarajan, learned senior counsel for the Transport Corporation/appellants in C.M.A.Nos.1675 to 1677/2003 and petitioner in C.R.P.No. 1031/2003.

5. For convenience we shall refer the case of both parties in M.C.O.P.No. 528/95 (which is the subject matter in

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C.M.A.Nos. 532/2003 and 1675/2003). The petitioners in M.C.O.P.No. 528/95 are the husband and children of the deceased Dr. Saraswathi Shanmugaraja. The deceased was aged about 38 years at the time of the accident. She was employed as a part-time Senior Registrar in Annaesthetics in the Northern and Yorkshire Regional Health Authority. She was employed ever since 1994. Her monthly salary was 1790 pounds. The deceased was a doctor by profession and she was also doing private consultancy, earning 1000 pounds per month. The deceased along with her husband's brother proceeded on a pilgrimage tour to Tiruchendur on 19-12-94 by an Ambassador car bearing registration No. TN-37-A-2076 driven by one P.N. Nallasivam, owned by K. Govindaraj and T.P. Mohanasundaram and insured with United India Insurance Company, Erode, respondents 3 to 6 respectively. The deceased was seated in the back and her brother-in-law was seated by the side of the driver in the front side. At about 12 noon while the car was going on a moderate speed along Dindigul-Karur NH 7 Road, a vehicle belonging to State Transport Corporation (Rani Mangammal Transport Corporation) No. TN-57-0411, driven by first respondent therein, came from the opposite direction in a rash and negligent manner, and hit against the Ambassador car as a result of which, the deceased sustained multiple fracture on the skull and met with her instantaneous death. In the very same accident, the driver of the Ambassador car also died. The heirs of the deceased Dr. Saraswathi Shanmugaraj and the heirs of the deceased driver of the car have filed Claim Petitions praying for compensation. Common evidence was let in. On appreciation of oral and documentary evidence, the Tribunal, after holding that the accident was caused due to the negligence of the driver of the Transport Corporation bus, passed an award of Rs.72,81,960/- in M.C.O.P.No. 528/95. As against the claim of Rs.6 Crores, which was subsequently restricted to Rs.3 Crores, the claimants therein filed C.M.A.No. 532/2003 praying for a further compensation of Rs.2,27,18,040/-. As said earlier, questioning the finding regarding negligence and quantum, the Transport Corporation has also filed appeal in C.M.A.No.1676/2003. In M.C.O.P.No. 903/98 filed by one K. Govindaraj, the Tribunal has granted damages to the extent of 48,852/-, against which the Transport Corporation has filed C.M.A.No. 1675/2003. In respect of death of the car driver, his legal heirs, namely, father and mother as well as his sister obtained an award for Rs.2,61,200/- in M.C.O.P.No. 1084/96, against which the Transport Corporation has filed C.M.A.No. 1677/2003. In respect of damages caused to their bus, the Transport Corporation has prayed for a compensation of Rs.3,931/- in M.C.O.P.No. 1083/96 which was ultimately rejected; hence they preferred C.R.P.No. 1031/2003.

6. An elaborate argument was advanced with regard to the manner of the accident and the ultimate finding of the Tribunal that the bus driver alone was negligence and responsible for the same. An argument was also addressed with reference to the amount determined in M.C.O.P.No. 528/95. As said earlier, while the claimants pray for higher compensation to the extent of Rs.3 Crores; the Transport Corporation feels that the amount is excessive. No

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argument was advanced with regard to the award passed in other petitions. In such circumstances, the following points arise for consideration:

i) Whether the accident was caused due to the negligence of the driver of the Transport Corporation bus as claimed by the claimants and upheld by the Tribunal; or whether the car driver alone was negligent and responsible for the same, as claimed by the Transport Corporation;

ii) Whether the amount determined in M.C.O.P.No. 528/95 is just and reasonable or it requires either enhancement as claimed by the claimants, or reduction as argued by the Transport Corporation.

7. Let us consider the first issue, namely, finding relating to negligence. It is the case of the claimants that on 19-12-94, when the deceased and her husband's brother were traveling in an Ambassador car bearing registration No. TN-37-A-2076 along with her two children, aged about 4 ½ years and one year respectively towards Tiruchendur on a pilgrimage tour at about 11-30 A.M. The accident occurred between the Ambassador car and the Transport Corporation bus near Viduthalaipatti in Karur-Dindigul road. On the side of the claimants, one Vetrivel who is said to have witnessed the occurrence, was examined as P.W.2. In his evidence before Court he has stated that he is residing in a village by name Mayanur near Karur. At that time he was working as a construction supervisor. According to him, at about 11-30 A.M. on the date of occurrence, while he was proceeding on Karur-Dindigul Main Road, near Viduthalaipatti, in order to take tea, he saw an Ambassador car proceeding at a moderate speed. At that time, a Transport Corporation bus was also coming from the opposite side at high speed. He asserted that the Transport Corporation bus, which was driven by its driver in a rash and negligent manner, dashed against the Ambassador car. Then he rushed towards the car where he found 4 persons inside the car, out of them, he took a child from the damaged car. He also noticed a lady in the car lying in a pool of blood. He asserted before the Court that the car driver was proceeding at a moderate speed and because of the negligent act of the bus driver, the accident occurred. Mr. R. Thiagarajan, learned senior counsel appearing for the Transport Corporation, would contend that though one of the occupants of the car is available who is the best person to speak about the manner of the accident, he has not been examined on the side of the claimants. According to him, P.W.2 is not a competent person to speak about the occurrence and placing reliance on his evidence by the Tribunal cannot be sustained. In the light of the above argument, we have carefully perused the evidence of P.W.2 who is said to have witnessed the occurrence. According to him, he is a construction supervisor. He asserted that at about 11-30 A.M. when he was proceeding near the accident spot in order to take tea, he saw the Ambassador car proceeding in a moderate speed and that at that time the Transport Corporation bus coming from the opposite

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direction at a high speed, dashed against the Ambassador car. According to him, it was he who lifted a minor child from inside the car. Though he was not the person who made a complaint to the police, his evidence, particularly his evidence in cross-examination, very much impressed us that he is a bona fide witness and he deposed before Court what he had seen and that there is no reason to disbelieve his version. He explained before the Court the manner of the accident, the damage caused to the car as well as the Corporation bus, the actual place of impact, the position of the vehicle after the impact etc. No doubt, Mr. R. Thiagarajan, learned senior counsel for the Transport Corporation, would submit that it would not be possible for a person by standing on a road to ascertain or gauge the actual speed of the vehicles proceeding on either side of the road. In cross-examination, P.W.2 has stated that the car was coming at a speed of 45 to 50 K.M per hour, whereas the bus was proceeding at a speed of 100 K.M per hour. The above statement of P.W.2 is only approximate and it would be possible for any one to guess the speed of the vehicle and it is not so difficult as claimed by the learned counsel for the Transport Corporation. Though P.W.2 has admitted that a tyre of the Ambassador car separated, he denied the suggestion that after burst of the tyre, the wheel got separated. He was also subjected to examination by the police. As discussed above, the perusal of the entire evidence of P.W.2 coupled with the other documents would show that he had spoken the truth before the Court and the Tribunal has rightly relied on his evidence.

8. As against the eye witness-P.W.2, the driver of the Transport Corporation bus was examined as R.W.1. According to him, on 19-12-94 at about 12.30 P.M. near Viduthalaipatti in Karur-Dindigul road, he noticed an Ambassador car coming from the opposite side at high speed and on seeing the same, he stopped his vehicle on the left side of the road and at a distance of 10 feet, he heard a dashing noise wherein the Ambassador car dashed against the right side bumper of the bus and after rubbing the bus on its right side, it fell into a nearby canal. He also deposed that due to burst of tyre, the right wheel of the car got separated. According to him, it was he who went to Vedachandur police station and made a complaint. The copy of the F.I.R. was marked as Ex.P-41. Sketch was marked as Ex. R-6. He also stated that though he was implicated in a criminal case and charge-sheet was filed by the police, ultimately the criminal case ended in acquittal. A copy of the judgement of the District Munsif-cum-Judicial Magistrate's Court, Vedachandur in C.C.No.112/95 has been marked as Ex. R-7. The observation mahazar prepared by the police was marked as Ex. R-5. Though R.W.1 has claimed that due to bust of right side tyre of the car, the car was forced to dash against the bus, as rightly stated by the Tribunal, admittedly no wheel mark was noted in Ex. R-5 observation mahazar. As rightly stated, if tyre had burst and got removed from the wheel, the disc of the wheel could have made some mark on the tar road and if that is so, the same should have definitely been noted in Ex.R-5-observation mahazar. On perusal of Ex.R-5, we do not see any disc

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mark on the tar road. The observation mahazar also showed the position of the car after the impact, and the damaged parts of the car etc. Though the conductor was also examined as R.W.2 on the side of the Transport Corporation, he also reiterated the defence taken by R.W.1. For the reasons mentioned above, we are of the view that his evidence is also not acceptable. The observation mahazar also shows the tyre mark of the bus to an extent of 20 feet which clearly proves that the bus driver had driven the bus at high speed. Ex. P-35-Motor Vehicle Inspector's report also does not contain any reference as to burst of car tyre, as claimed by R.Ws.1 and 2. As said earlier, the observation mahazar shows the tyre mark of the bus alone to a distance of 20 feet. Though complaint-Ex.P-41 was given by R.W.1, admittedly there is no reference therein regarding burst of car tyre. If it had really happened, then nothing prevented him (R.W.1) in mentioning the same in his complaint-Ex. P-41 to the police. Though it is stated that the criminal case filed against the driver of the bus ended in acquittal, as seen from Ex. R-7, the acquittal of the driver in a criminal case has no bearing for arriving at a conclusion by the Tribunal, since the degree of proof before the Criminal Court is different. As discussed earlier, P.W.2 is an independent witness and his statement before Court is more probable and acceptable and the same has rightly been relied on and accepted by the Tribunal. Though Ex.P-41-First Information Report was given by R.W.1, it is to be noted that the sketch and the observation mahazar were prepared by the police and the bus driver alone was charge sheeted by the police for the accident in question. The perusal of the sketch would also clearly show that the accident was caused only due to the rash and negligent driving of the bus driver and the car driver was nowhere responsible. After considering all these relevant material aspects, the Tribunal has rightly concluded that the bus driver alone was negligent and responsible for the accident. On perusal of the same and in the light of the above discussion, we concur with the above conclusion and reject the contra argument made by the learned senior counsel for the Transport Corporation.

9. Now let us consider the quantum of compensation payable to the claimants in M.C.O.P.No. 528/95. The claimants in that petition are husband and minor children of the deceased. Second claimant-minor son was aged about 4 ½ years and third claimant, minor daughter was aged about 1 year. Altogether they made a claim for Rs.6 Crores. The case of the claimants is that the deceased Dr. Saraswathi was employed as Senior Registrar in Anaesthetics, Northern Yorkshire Regional Health Authority, Queens Building, Park Parade, Harrogate, U.K. At the time of the accident, she was aged about 38 years and as a Senior Registrar was drawing a salary of 1790 Sterling [hereinafter referred to as "P.S"] per month. She was also earning 1000 P.S. per month from private consultancy. If the total amount of 2790 P.S. is converted into Indian currency, it would come to Rs.1,35,319/- per month. In order to prove the educational qualification, employment and earning of the deceased at London, her husband Dr. P. Shanmugaraj, first claimant, was examined as P.W.1.

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According to him, his wife had passed her Post-Graduate in F.F.A.R.C.S. (Dublin) in 1998 and D.A. (Diploma in Anaesthesia) in London in October, 1998. P.W.1 further deposed that she was employed as Senior Registrar in Anaesthesia in Northern Yorkshire Regional Health Authority, which is a Government employment in U.K. The date of birth of the deceased is 27-06-1956 as per S.S.L.C. Book-Ex.P-5. It shows that at the time of the accident, she had just completed 38 years of age. She had M.B.B.S. degree as per Ex. P-6. Ex.P-7 is the internship. Ex. P-8 is to prove her admission as fellow of faculty Anaesthetic by a Royal College of Surgeon in Ireland. Ex.P-9 is the certificate granting Diploma in Anaesthesia in U.K. Ex.P-10 is the certificate issued by the Joint Committee of the Post Graduate Training for General Practice in U.K. National Health Service, to the deceased in September, 1992. Ex.P-11 is the certificate issued to the deceased by the University of Birmingham Institute of Child Health. Exs. P-12 to P-14 are the documents which would evidence that the deceased was engaged in private consultancy work and was earning a considerable sum. There are various other documents to prove her meritorious service in her capacity. It is also the evidence of P.W.1 that she had acted as an Indian Ambassador in U.K. and thereby bringing fame and glory to Indian Doctors in general and the country in particular. By pointing out the oral and documentary evidence, Mr. R. Gandhi, learned senior counsel appearing for the claimants, would submit that her commitment to medical profession is well demonstrated by the documentary evidence. It is also his argument that the deceased Dr. Saraswathy having obtained diploma and her qualification in Anaesthesia in U.K. and obtaining Senior Reigistrar's position is a very difficult proposition for any overseas female doctor. He argued that it can be stated without fear of contradiction that by putting her in such placement, the highest honour has been showered on an Indian female Doctor which is a rare commodity.

10. In order to prove her salary, her income tax returns-Exs. P-1 to P-3 have been filed. Ex. P-4 series are the salary slips of the deceased. Though Mr. R. Thiagarajan, learned senior counsel for the Transport Corporation, submitted that there is no acceptable documentary evidence to prove her salary and perks, the income-tax returns, viz., Exs. P-1 to P-3 clearly show her income. Further, Exs. P-4 and P-5 series also show the scale of pay for a Senior Registrar and also the scale of pay for a consultant. The particulars furnished show that for a Senior Registrar the maximum pay per annum in the year 1994 was 28025 P.S. in 1997 it was 30970 P.S.; in 1998 it was 32830 P.S; in 2001 it was 36460 P.S; in 1994 for a consultant the maximum scale was 51165 P.S; in 1997 it was 55705 P.S; in 1998 it was 59040 P.S; and in 2001 it was 82770 P.S. By drawing our attention to the above details, it was contended that the scale of pay for both Senior Registrar and Consultant has been progressively increasing. Ex.P-31 also shows that the next appointment of the deceased was Consultant in Anaesthetist, which she would have reached in the year 2000-2001. The said document also shows that a salary for full time consultant Anaesthetist was 45740

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P.S. per annum with raising annual income to the maximum of 59040 P.S. This fact is also seen in Ex. P-5 in which it is found that the consultant's maximum scale was 87280 P.S. in the year 2001. It is also the case of the claimants that the deceased would have earned much more than this sum during her life time. There is no dispute that the evidence of P.W.1 and the documents produced and marked through him amply proved the qualification, employment and earning of the deceased.

11. Mr. R. Gandhi, learned counsel appearing for the claimants, submitted that as far as award of compensation in a fatal accident case where the promotional prospects of the deceased are concerned, the factors that have to be taken into account have been laid down by the Supreme Court in Manjushri v. B.L. Gupta, reported in AIR 1977 S.C. 1158 and by drawing our attention to the oral and overwhelming documentary evidence produced in this case, it was contended that the deceased would have reached the maximum scale of 87280 P.S. per annum as per Exs. P-31 and P-15. On the other hand, Mr. R. Thiagarajan, learned senior counsel for the Transport Corporation, contended that the structured formula under the amended Motor Vehicles Act cannot be made applicable to the present claim in view of the fact that the amount claimed in the present application is more than what is contemplated under the structured formula under Section 165-A of the Amended Motor Vehicles Act. It is also his claim that since the legal representatives are entitled to various benefits from the Government due to the death of the deceased, the amount claimed by the claimants are excessive and, in any event, the Tribunal was not justified in granting such amount. The Transport Corporation has also produced and marked Exs. R-12 to R-14, R-16 to R-20 regarding the employment salary details of the deceased. However, P.W.1 has stoutly denied the stand taken by the Transport Corporation.

12. Learned counsel appearing for the claimants by pointing out that the Tribunal has not considered various documents filed on their side about the future earnings which may go upto 87820 P.S. per year. It is contended that before the Tribunal it was argued on the side of the Transport Corporation that the multiplier that can be applied is 18 and not 23, as claimed by the claimants. In such a circumstance, according to Mr. R. Gandhi, the Tribunal ought to have applied proper multiplier, namely, 18, which is also evident from the Second Schedule of the Motor Vehicles Act. His grievance is that Tribunal took only 50 per cent of the total earning without any future earning. He also contended that the promotional aspects have to be considered as per Munjushri v. B.L. Gupta [AIR 1977 Supreme Court 1158]; Jokhi Ram v. Naresh Kanta [1978 ACJ 80]; Prem Devi Pandey v. Dayual Singh [1976 ACJ 407]; Ritaben v. Ahmedabad Municipal Transport Services [2000(1) ACJ 153]; Pingala Devi v. Gopal Lal [1997 ACJ 1020].

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13. Both the senior counsel very much relied on a decision of the Supreme Court in United India Insurance Co., Ltd., v. Patricia Jean Mahajan, reported in [2002] 6 Supreme Court Cases 281. In that case, Dr. S, a person of Indian origin went to USA and became an American national. He was a medical graduate. He established himself in the medical profession in that country. While on a visit to India, on 3-2-1995 he was travelling in a car belonging to one of his brothers. The car was hit by a truck. S was injured in that accident and succumbed to his injuries. He was aged 47-48 years. He left behind his widow and three children in USA and his parents, aged 69/73, in India. His dependants filed a petition under Section 166, Motor Vehicles Act claiming compensation in a sum of Rs.54 crores. According to the claimants, S had been providing good education to his children and had also been sending a sum of Rs.8000 to his parents in Delhi. The Accidents Claims Tribunal found the yearly carry-home income of the deceased to be 3,09,204 dollars. After setting apart 2/3rd amount, it held the amount of dependency to be 1,03,068 dollars. It applied the multiplier of 7 to compute the amount of compensation and after deducting the amounts of benefit of social security system/LIC and applying the exchange rate of Rs.30, awarded a sum of Rs.1.19 crores with interest @ 12% from the date of filing of the petition up to the date of payment. A learned Single Judge of the High Court found the carry-home income of the deceased to be 3,39,445 dollars and after deducting 1/3rd thereof, fixed the amount of dependency at 2,26,297 dollars. The learned Single Judge applied the multiplier of 10 and disallowed any deductions on account of social security system. He maintained the same rate of interest but applied the rate of exchange at Rs.47. Thus, the total amount of compensation came to Rs.10.38 crores. A Division Bench of the High Court applied the multiplier of 13 and the exchange rate of Rs.30 but maintained the rest of the order passed by the Single Judge. The Division Bench took the view that in the matter of multiplier there was no reason not to follow the Second Schedule to the Motor Vehicles Act. Thus, the amount of compensation together with interest came to about Rs.6.12 crores. In the appeals before the Supreme Court, it was contended that the amount of multiplicand was relevant and in case the same was a high amount, a lower multiplier could appropriately be applied and in the present case the multiplier of 13 was not appropriate. On the other hand, the claimants contended that in no circumstances the amount of multiplicand could be a relevant consideration for application of an appropriate multiplier. The insurer also contended that the amount received by the claimants on account of life insurance policy of the deceased and the allowances received by his widow and children under the social security system were deductible from the amount of compensation. The claimant contended that the exchange rate of Rs.47 prevalent at the time of the award and not the rate of Rs.30 ought to have been applied.

14. While considering the orders of the learned Single Judge and the Division Bench, the Supreme Court has held: (para 19)

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> "19.....Looking to the Indian economy, fiscal and financial situation, the amount is certainly a fabulous amount though in the background of American conditions it may not be so. Therefore, where there is so much of disparity in the economic conditions and affluence of the two places viz. the place to which the victim belongs and the place where the compensation is to be paid, a golden balance must be struck somewhere, to arrive at a reasonable and fair mesne. Looking by the Indian standards they may not be much too overcompensated and similarly not very much undercompensated as well, in the background of the country where most of the dependent beneficiaries reside. Two of the dependants, namely, parents aged 69/73 years live in India, but four of them are in the United States. Shri Soli J. Sorabjee submitted that the amount of multiplicand shall surely be relevant and in case it is a high amount, a lower multiplier can appropriately be applied. We find force in this submission. Considering all the facts and factors as indicated above, to us it appears that application of multiplier of 7 is definitely on the lower side. Some deviation in the figure of multiplier would not mean that there may be a wide difference between the multiplier applied and the scheduled multiplier which in this case is 13. The difference between 7 and 13 is too wide. As observed earlier, looking to the high amount of multiplicand and the ages of the dependants and the fact that the parents are residing in India, in our view application of multiplier of 10 would be reasonable and would provide a fair compensation i.e. a purchase factor of 10 years. We accordingly hold that multiplier of 10 as applied by the learned Single judge should be restored instead of multiplier of 13 as applied by the Division Bench....."

The above said principle of the Supreme Court is directly applicable to the case on hand. Here also, the deceased a person of Indian origin went to U.K and secured a Government job, the documents produced and the statement of P.W.1 show that the deceased was highly qualified person earning sizeable income. Though there is no clinching documentary evidence to show that the deceased would continue with the said employment till the age of retirement, some of the documents show that the contract was for a particular period (7 years). However, as rightly argued by the learned senior counsel for the claimants that considering her educational qualification and experience, her position at the time of the accident, it would be possible for her to earn more in future years. Though Mr. R. Gandhi, learned senior counsel for the claimants, vehemently argued that the Tribunal was not justified in taking her contribution only to an extent of 50 per cent of her earnings, in the light of the discussion

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and conclusion of the Supreme Court, in the above referred case, and in view of the fact that the Indian economy, fiscal and financial situation and the back ground of UK conditions, it cannot be claimed that the standard of living and other expenses are similar in both the places. Undoubtedly, there is much of disparity in the economic conditions and affluent of two places that is the place to which the victim belongs and the place where the compensation is to be paid. If we consider these aspects and of the fact that in foreign country, particularly UK the extent for own maintenance and for education of their children etc., compared to our country is on the higher side and by applying the principles laid down in the Supreme Court's case, we hold that the Tribunal is fully justified in scaling down 50 per cent of her earnings and we agree with the said conclusion and reject the argument of the learned senior counsel for the claimants.

15. Likewise, though elaborate argument was advanced, the Tribunal has not considered her future prospects, earning power, capacity and accepted only the actual amount that she was getting at the time of her death, as discussed earlier, it depends upon so many factors. As rightly pointed out by the learned senior counsel for the Transport Corporation, except income-tax returns-Exs.P-1 to P-3, there is no definite material or service particulars from the employer concerned; accordingly we agree with the conclusion arrived by the Tribunal and approve the multiplicand determined by the Tribunal.

16. Now let us consider whether the multiplier, namely, 10 adopted by the Tribunal is just and reasonable. Learned counsel for the claimants would submit that even before the Tribunal the stand of the Transport Corporation was that multiplier cannot exceed 18 considering the age of the deceased and the Second Schedule to the Motor Vehicles Act. There is no dispute that if we apply the strict provisions of the Act, namely, Second Schedule with reference to her age, the proper multiplier would be 17 : 18. However, as observed in the Supreme Court's decision referred above, when higher multiplicand is taken only lower multiplier to be applied. Considering the fact that the deceased had left two minor children above the age of 4 ½ years and one year at the time of the accident, had their father and husband of the deceased is not alive, we could have considered longer multiplier as claimed by the claimants. Admittedly, in the present case, the first claimant being the husband of the deceased and father of the minor children-claimants 2 and 3, and also employed getting income decently, we are not inclined to adopt the multiplier in terms of Second Schedule to the Motor Vehicles Act. In the case before the Supreme Court, the deceased was aged about 47-48 years and was a medical graduate. Though the deceased was male in that case, the deceased is a female in the case on hand. No doubt, she was also a medical graduate and highly qualified. Applying the said formula as enunciated by the Supreme Court, and considering the fact that the deceased in the case on hand was aged about 38 years (proved by documentary evidence)and also taking note of the fact that the age of

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the minor children (4 ½ years and 1 year) and also considering the fact that their father is employed by balancing both, we are of the view that multiplier 12 would be appropriate. The Tribunal has already fixed annual contribution of the deceased as Rs.7,24,596/- (rounded of to Rs.7,25,000/-) and by applying multiplier 12, the pecuniary loss is fixed at Rs.87,00,000/-. In addition to this, the Tribunal has granted Rs.1,000/-towards transport charges; Rs.10,000/- towards funeral expenses for which there is no dispute and we confirm the same. The Tribunal has also granted Rs.25,000/- towards loss of love and affection in favour of claimants 2 and 3 which is also reasonable and acceptable. The Tribunal has not granted any amount towards loss of consortium in favour of the first claimant, the husband of the deceased. Considering the fact that he being 43 years and his wife being 38 years at the time of the accident, we grant Rs.14,000/- towards consortium to the first claimant.

17. In the light of the foregoing discussions, in modification of the amount granted by the Tribunal, we fix the compensation as hereunder:

		Rs.
i)	Pecuniary loss	87,00,000
ii)	Transport charges	1,000
iii)	Funeral expenses	10,000
iv)	Loss of love and affection to the minor children	25,000
v)	Loss of consortium to 1st claimant-husband	14,000
	Total	87,50,000

18. Though an argument was advanced, namely, that the rate of interest i.e., 9 per cent is excessive, considering the fact that the accident occurred on 19-12-1994 and the Tribunal disposed of the claim petitions on 31-12-2002, we are of the view that the interest at the rate of 9 per cent for the award amount is reasonable and acceptable and it requires no enhancement or reduction. Except the amount of Rs.14,000/- towards loss of consortium to the first claimant, the entire balance amount, namely, Rs.87,36,000/- are payable only to the minor claimants 2 and 3. Both of them are entitled to share the amount equally. As observed by the Tribunal, the claimants 2 and 3 being minors, their amount shall be invested in a nationalized bank till they attain majority. Their father and guardian/first claimant, namely, Dr. P. Shanmugaraj is permitted to withdraw accrued interest once in six months directly from the Bank for the welfare of the minor children. The Transport Corporation is directed to deposit the enhanced amount within a period of eight weeks from to-day. No argument was advanced with regard to the quantum arrived in the other claim petitions. In view of our finding

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on the negligence aspect, the Civil Revision Petition filed by the Transport Corporation is liable to be dismissed.

19. Under these circumstances, C.M.A.No. 532/2003 filed by the claimants for enhancement is allowed in part to the extent mentioned above. C.M.A.Nos. 1675 to 1677/2003 and C.R.P.No. 1031/2003 filed by the Transport Corporation are dismissed. No costs. Connected C.M.Ps.,are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

R.B.

To:-

1. The Prl. Subordinate Judge (in-charge) (M.A.C.T), Coimbatore.

+2ccs to Mr.R.G.Narendhiran, Advocate Sr 18850 & 18851

+1cc to Mr.S.Saravanan, Advocate Sr 19112

+5ccs to Mr.L.G.Sahadevan,Advocate Sr 18858

SMK (CO)
km/10.5.

CMA Nos.532,1675 to 1677

of 2003 and CRP No.1031/2003
and

CMP Nos.10793 to 10795/2003

and 16352/2004.

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